IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WA.No. 2263 of 2006()

AGAINST THE JUDGEMENT/ORDER IN OP.5323/2001 Dated 03/04/2006
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APPELLANT: RESPONDENTS
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1. UNION OF INDIA, REPRESENTED BY
SECRETARY, MINISTRY OF DEFENCE, NEW DELHI.

2. THE CHIEF CONTROLLER OF DEFENCE
ACCOUNTS (PENSION), ALLAHABAD.

3. OFFICER I/C RECORDS,
ASC RECORDS, BANGALORE.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SR. PANEL

RESPONDENTS: PETITIONER

K.P.MADHAVA MARAR (EX.SEP. NO.13821275),
KUNHIPARAMBATH HOUSE, P.O.ANIYARAM,
CHOKLI, CANNANORE.

BY ADV. SRI.M.RAJAGOPALAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

W.A. NO. 2263 OF 2006

Dated this the 6th day of December 2006

JUDGMENT

Abdul Gafoor, J

The first respondent - writ petitioner who filed the writ petition in the year 2001 claiming pension was granted benefit as per the impugned judgment dated 03.04.2006. During the pendency of the petition for 5 years the appellants/respondents totally neglected in their duty to file a counter affidavit. There was, therefore, an order by the learned single Judge on 16.03.2006 that the counter affidavit if any should be filed on or before 3.04.2006 and that in case no such counter affidavit was filed it would be treated as the appellant did not have any objection in allowing the prayers in the Writ Petition. This order was also passed after about 5 years of pendency of the writ petition, because that was the only way out for the court at that time, so that the respondent could be heard usefully. But this indulgence also fell on deaf ears. The learned single judge had, therefore, no option but to allow the prayers. The appeal is

against the judgment so rendered. Even then the appeal has been filed with delay which we have condoned. In that situation, we find no reason to interfere and the writ appeal is dismissed accordingly.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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